

JACK SEDMAN

IBLA 76-582

Decided June 25, 1976

Appeal from decision of the Caspar, Wyoming, District Office, Bureau of Land Management, rejecting a grazing lease application.

Affirmed.

1. Grazing Leases: Generally--Rules of Practice: Appeals: Service on Adverse Party

An appeal from a decision of the Bureau of Land Management rejecting a grazing lease application and approving a conflicting application will not be summarily dismissed for failure to serve an adverse party who is not specifically designated as such in the decision appealed from. A decision of the Bureau of Land Management that a conflicting applicant has a preference right to the grazing lease will be affirmed when the applicant appealing fails to indicate any error in the decision.

APPEARANCES: Jack Sedman, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jack Sedman appeals from the decision dated March 1, 1976, of the Caspar, Wyoming, District Office, Bureau of Land Management (BLM), rejecting the application of Mr. Sedman and Gertrude Sedman for a grazing lease pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). In its decision, the District Office informed appellant that the land in their grazing lease application, the NE 1/4, sec. 25, T. 22 N., R. 61 W., 6th P.M., would be leased to a conflicting applicant, Ralph O. Lorenz.

The District Office originally accepted appellant's grazing lease application for this land and rejected the renewal application of Mr. Lorenz, from which decision, dated May 16, 1975,

Mr. Lorenz appealed. On appeal, this Board set aside the decision of the District Office. Ralph O. Lorenz, 24 IBLA 1 (1976). The basis for our decision was that the District Office erroneously treated both applicants as within the same plane of preference when it appeared that Mr. Lorenz was entitled to greater preference under 43 CFR 4121.2-1(c)(1). We then remanded the case to the District Office for further consideration.

On remand, the District Office awarded the grazing lease to Mr. Lorenz' based upon his preference right. Appellant has not disputed the holding of the Board, and the decision of the District Office, concerning the superior preference right of Mr. Lorenz. Rather, he states he was never served by Mr. Lorenz "with a copy of the appeal" from the May 1975 decision of the District Office and argues that the appeal of Mr. Lorenz decided in Ralph O. Lorenz, *supra*, should therefore have been summarily dismissed for failure to serve an adverse party. Appellant's argument is incorrect.

[1] An appeal is subject to summary dismissal by the Board if the notice of appeal and statement of reasons are not served upon adverse parties within the time required. 43 CFR 4.402(b), and (c). Dismissal of an appeal for this reason is discretionary. T. T. Cowgill, 19 IBLA 274, 275 (1975); see Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969).

The regulation directing appellants to serve adverse parties with copies of documents only requires service on adverse parties "named in the decision appealed from." 43 CFR 4.413. The Board has held that an appeal will not be dismissed for lack of service when the adverse party is not specifically designated as such in the decision appealed from. T. T. Cowgill, *supra* at 275-76.

The May 1975 decision of the District Office did not name the Sedmans as adverse parties who should be served. Therefore, the failure of Mr. Lorenz to send a copy of his appeal to the Sedmans did not subject his appeal to summary dismissal. In our Lorenz decision we noted that the Sedmans should have been named as adverse parties and that future decisions should name the parties who may be adversely affected and served with the appeal. The Sedmans would then have the opportunity to appeal from any future adverse BLM decision and be able to point out any error in the factual and legal basis for the decision.

In this appeal appellant has made no attempt to show that he owns or controls private land contiguous to the Federal land to be leased. He has not shown any reasons why the District Office acted improperly when it rejected the application, other than his objection to the fact he was not served with the original decision. As we have indicated, this is no basis for overturning the BLM decision currently being appealed or for changing our Lorenz decision. Appellant has now had opportunity to show that he has a preference right and that the BLM decision being appealed is in error. Since he has failed to do so, the decision rejecting the Sedman's grazing lease application must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson

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Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

